

IC 9-30-5

Chapter 5. Operating a Vehicle While Intoxicated

IC 9-30-5-0.1

Repealed

(Repealed by P.L.63-2012, SEC.14.)

IC 9-30-5-0.2

Application of certain amendments to prior law

Sec. 0.2. The amendments made to IC 33-19-6-10 (before its repeal, now codified at IC 33-37-5-10) by P.L.85-1998 apply to findings under this chapter made after June 30, 1998, regardless of when the action was filed.

As added by P.L.220-2011, SEC.230.

IC 9-30-5-1

Class C misdemeanor; defense

Sec. 1. (a) A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath;

commits a Class C misdemeanor.

(b) A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath;

commits a Class A misdemeanor.

(c) A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor.

(d) It is a defense to subsection (c) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

As added by P.L.2-1991, SEC.18. Amended by P.L.33-1997, SEC.7; P.L.266-1999, SEC.2; P.L.1-2000, SEC.6; P.L.1-2000, SEC.7; P.L.175-2001, SEC.5.

IC 9-30-5-2

Class A misdemeanor

Sec. 2. (a) Except as provided in subsection (b), a person who operates a vehicle while intoxicated commits a Class C misdemeanor.

(b) An offense described in subsection (a) is a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person.

As added by P.L.2-1991, SEC.18. Amended by P.L.175-2001, SEC.6.

IC 9-30-5-3

Class D felony; previous convictions; passenger less than 18 years of age

Sec. 3. (a) Except as provided in subsection (b), a person who violates section 1 or 2 of this chapter commits a Class D felony if:

(1) the person has a previous conviction of operating while intoxicated that occurred within the five (5) years immediately preceding the occurrence of the violation of section 1 or 2 of this chapter; or

(2) the person:

(A) is at least twenty-one (21) years of age;

(B) violates section 1(b) or 2(b) of this chapter; and

(C) operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age.

(b) A person who violates section 1 or 2 of this chapter, or subsection (a)(2) of this section, commits a Class C felony if:

(1) the person has a previous conviction of operating while intoxicated causing death (IC 9-30-5-5); or

(2) the person has a previous conviction of operating while intoxicated causing serious bodily injury (IC 9-30-5-4).

As added by P.L.2-1991, SEC.18. Amended by P.L.175-2001, SEC.7, P.L.243-2001, SEC.1 and P.L.291-2001, SEC.222; P.L.82-2004, SEC.1; P.L.126-2008, SEC.9.

IC 9-30-5-4

Classification of offense; serious bodily injury

Sec. 4. (a) A person who causes serious bodily injury to another person when operating a vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;

commits a Class D felony. However, the offense is a Class C felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense.

(b) A person who violates subsection (a) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.5; P.L.97-1996, SEC.3; P.L.96-1996, SEC.3; P.L.33-1997, SEC.8; P.L.1-2000, SEC.8; P.L.175-2001, SEC.8; P.L.76-2004, SEC.3; P.L.125-2012, SEC.335.

IC 9-30-5-5

Classification of offense; death; death of law enforcement animal

Sec. 5. (a) A person who causes the death of another person when operating a vehicle:

- (1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath;
- (2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or
- (3) while intoxicated;

commits a Class C felony. However, the offense is a Class B felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense, or if the person operated the vehicle when the person knew that the person's driver's license, driving privilege, or permit is suspended or revoked for a previous conviction for operating a vehicle while intoxicated.

(b) A person at least twenty-one (21) years of age who causes the death of another person when operating a vehicle:

- (1) with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath; or
- (2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood;

commits a Class B felony.

(c) A person who causes the death of a law enforcement animal (as defined in IC 35-46-3-4.5) when operating a vehicle:

- (1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath; or
- (2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood;

commits a Class D felony.

(d) A person who violates subsection (a), (b), or (c) commits a separate offense for each person or law enforcement animal whose death is caused by the violation of subsection (a), (b), or (c).

(e) It is a defense under subsection (a)(2), (b)(2), or (c)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.6; P.L.97-1996, SEC.4; P.L.96-1996, SEC.4; P.L.33-1997, SEC.9; P.L.1-2000, SEC.9; P.L.120-2000, SEC.1; P.L.175-2001, SEC.9; P.L.82-2004, SEC.2; P.L.76-2004, SEC.4; P.L.2-2005, SEC.36; P.L.102-2010, SEC.1; P.L.125-2012, SEC.336.

IC 9-30-5-6

Class C infraction; violation of probationary license

Sec. 6. (a) A person who operates a vehicle in violation of any term of a probationary license issued under this chapter, IC 9-30-6, or IC 9-30-9 commits a Class C infraction.

(b) In addition to any other penalty imposed under this section, the court may suspend the person's driving privileges for a period of not more than one (1) year.

As added by P.L.2-1991, SEC.18. Amended by P.L.125-2012, SEC.337.

IC 9-30-5-7

Ignition interlock device offenses; violation of court order

Sec. 7. (a) A person who violates a court order issued under section 16 of this chapter commits a Class A misdemeanor.

(b) Except as provided in subsection (c), a person who knowingly assists another person who is restricted to the use of an ignition interlock device to violate a court order issued under this chapter commits a Class A misdemeanor.

(c) Subsection (b) does not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device:

(1) is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(2) the restricted person does not operate the vehicle.

(d) A person who, except in an emergency, knowingly rents, leases, or loans a motor vehicle that is not equipped with a functioning ignition interlock device to a person who is restricted under a court order to the use of a vehicle with an ignition interlock device commits a Class A infraction.

(e) A person who is subject to an ignition interlock device restriction and drives another vehicle in an emergency situation must notify the court of the emergency within twenty-four (24) hours.

As added by P.L.2-1991, SEC.18. Amended by P.L.131-1993, SEC.1.

IC 9-30-5-8

Ignition interlock device offenses; tampering

Sec. 8. (a) A person who knowingly or intentionally tampers with an ignition interlock device for the purpose of:

(1) circumventing the ignition interlock device; or

(2) rendering the ignition interlock device inaccurate or inoperative;

commits a Class B misdemeanor.

(b) A person who solicits another person to:

(1) blow into an ignition interlock device; or

(2) start a motor vehicle equipped with an ignition interlock device;

for the purpose of providing an operable vehicle to a person who is restricted to driving a vehicle with the ignition interlock device commits a Class C infraction.

As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.5.

IC 9-30-5-8.5

Class C infraction; person less than 21 years of age driving under the influence

Sec. 8.5. (a) A person who:

- (1) is less than twenty-one (21) years of age; and
- (2) operates a vehicle with an alcohol concentration equivalent to at least two-hundredths (0.02) gram but less than eight-hundredths (0.08) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

(b) In addition to the penalty imposed under this section, the court may recommend the suspension of the driving privileges of the operator of the vehicle for not more than one (1) year.

As added by P.L. 96-1996, SEC.5. Amended by P.L. 33-1997, SEC.10; P.L. 1-2000, SEC.10; P.L. 175-2001, SEC.10.

IC 9-30-5-9

Operation of vehicle in place other than public highway

Sec. 9. It is not a defense in an action under this chapter that the accused person was operating a vehicle in a place other than on a highway.

As added by P.L. 2-1991, SEC.18.

IC 9-30-5-9.5

Probationary driving privileges; inapplicability to commercial driver's license

Sec. 9.5. Probationary driving privileges under this chapter do not apply to a commercial driver's license in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

As added by P.L. 219-2003, SEC.7. Amended by P.L. 125-2012, SEC.338.

IC 9-30-5-10

Suspension of driving privileges; probationary driving privileges

Sec. 10. (a) In addition to a criminal penalty imposed for an offense under this chapter, IC 35-46-9, or IC 14-15-8 (before its repeal), the court shall, after reviewing the person's bureau driving record and other relevant evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section. The court may require that a period of suspension recommended under this section be imposed, if applicable, before a period of incarceration or after a period of incarceration, or both before and after a period of incarceration, as long as the suspension otherwise complies with the periods established in this section.

(b) If the court finds that the person:

- (1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or
- (2) has a previous conviction of operating a vehicle or a

motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court; the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court shall order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. However, the court may grant probationary driving privileges under this subsection without requiring the installation of an ignition interlock device if the person is successfully participating in a court supervised alcohol treatment program in which the person is taking disulfiram or a similar substance that the court determines is effective in treating alcohol abuse. The person granted probationary driving privileges under this subsection shall pay all costs associated with the installation of an ignition interlock device unless the sentencing court determines that the person is indigent.

(e) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b) (before its repeal);
- (4) IC 14-15-8-8(c) (before its repeal);
- (5) IC 35-46-9-6(b); or
- (6) IC 35-46-9-6(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

(f) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule

I, II, III, IV, or V of IC 35-48-2, in which a vehicle was used in the offense, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

(g) The bureau shall fix the period of suspension in accordance with the recommendation of the court under this section and in accordance with IC 9-30-6-9. If the court fails to recommend a fixed period of suspension, the bureau shall impose the minimum period of suspension required under this section.

As added by P.L.2-1991, SEC.18. Amended by P.L.131-1993, SEC.2; P.L.64-1994, SEC.3; P.L.57-1995, SEC.3; P.L.76-2004, SEC.6; P.L.94-2006, SEC.5; P.L.172-2006, SEC.1; P.L.126-2008, SEC.10; P.L.40-2012, SEC.2; P.L.125-2012, SEC.339.

IC 9-30-5-11

Probationary driving privileges; restrictions; commencement date

Sec. 11. (a) If a court grants a person probationary driving privileges under section 12 of this chapter, the person may operate a vehicle only as follows:

- (1) To and from the person's place of employment.
- (2) For specific purposes in exceptional circumstances.
- (3) To and from a court-ordered treatment program.

(b) If the court grants the person probationary driving privileges under section 12(a) of this chapter, that part of the court's order granting probationary driving privileges does not take effect until the person's driving privileges have been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) The court shall notify a person who is granted probationary driving privileges of the following:

- (1) That the probationary driving period commences when the bureau issues the probationary driving privileges.
- (2) That the bureau may not issue probationary driving privileges until the bureau receives a reinstatement fee from the person, if applicable, and the person otherwise qualifies for valid driving privileges.

As added by P.L.2-1991, SEC.18. Amended by P.L.153-2005, SEC.3; P.L.125-2012, SEC.340.

IC 9-30-5-12

Probationary driving privileges; grounds

Sec. 12. (a) If:

- (1) a court recommends suspension of a person's driving privileges under section 10(b) of this chapter for an offense committed under this chapter; and
- (2) the person did not refuse to submit to a chemical test offered under IC 9-30-6-2 during the investigation of the offense;

the court may stay the execution of the suspension of the person's driving privileges and grant the person probationary driving privileges for one hundred eighty (180) days.

(b) An order for probationary privileges must be issued in accordance with sections 11 and 13 of this chapter.

(c) If:

- (1) a court recommends suspension of a person's driving privileges under section 10(c), 10(d), or 10(e) of this chapter for an offense committed under this chapter; and
- (2) the period of suspension recommended by the court exceeds the minimum permissible fixed period of suspension specified under section 10 of this chapter;

the court may stay the execution of that part of the suspension that exceeds the minimum fixed period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) In addition to the other requirements of this section, if a person's driving privileges are suspended or revoked under section 10(f) of this chapter, a court must find that compelling circumstances warrant the issuance of probationary driving privileges.

(e) Before a court may grant probationary driving privileges under this section, the person to whom the probationary driving privileges will be granted must meet the burden of proving eligibility to receive probationary driving privileges.

As added by P.L.2-1991, SEC.18. Amended by P.L.64-1994, SEC.4.

IC 9-30-5-13

Order for probationary driving privileges; contents; violation of terms of order

Sec. 13. (a) An order for probationary driving privileges granted under this chapter must include the following:

- (1) A requirement that the person may not violate a traffic law.
- (2) A restriction of a person's driving privileges providing for automatic execution of the suspension of driving privileges if an order is issued under subsection (b).
- (3) A written finding by the court that the court has reviewed the person's driving record and other relevant evidence and found that the person qualifies for probationary driving privileges under this chapter.
- (4) Other reasonable terms of probation.

(b) If the court finds that the person has violated the terms of the order granting probationary driving privileges, the court shall order execution of that part of the sentence concerning the suspension of the person's driving privileges.

As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.7; P.L.125-2012, SEC.341.

IC 9-30-5-14

Suspension of driving privileges; credit; period; termination

Sec. 14. (a) A person whose driving privileges are suspended under section 10 of this chapter:

- (1) is entitled to credit for any days during which the license was suspended under IC 9-30-6-9(c); and
- (2) may not receive any credit for days during which the person's driving privileges were suspended under

IC 9-30-6-9(b).

(b) A period of suspension of driving privileges imposed under section 10 of this chapter must be consecutive to any period of suspension imposed under IC 9-30-6-9(b). However, if the court finds in the sentencing order that it is in the best interest of society, the court may terminate all or any part of the remaining suspension under IC 9-30-6-9(b).

As added by P.L.2-1991, SEC.18. Amended by P.L.2-2005, SEC.37.

IC 9-30-5-15

Imprisonment; community restitution or service; alcohol or drug abuse treatment

Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least five (5) days;
or

(B) the person to perform at least one hundred eighty (180) hours of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least ten (10) days;
or

(B) the person to perform at least three hundred sixty (360) hours of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has at least two (2) previous convictions of operating while intoxicated.

(c) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence imposed under this section may not be suspended. The court may require that the person serve the term of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) determined appropriate by the court. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) the entire sentence must be served within six (6) months after the date of sentencing.

(d) Notwithstanding IC 35-50-6, a person does not earn credit

time while serving a sentence imposed under this section.

As added by P.L.2-1991, SEC.18. Amended by P.L.266-1999, SEC.3; P.L.32-2000, SEC.2; P.L.85-2004, SEC.48.

IC 9-30-5-16

Probationary driving privileges; ignition interlock device; alcohol treatment program

Sec. 16. (a) Except as provided in subsections (b) and (c) and section 10 of this chapter, the court may, in granting probationary driving privileges under this chapter, also order that the probationary driving privileges include the requirement that a person may not operate a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(b) An order granting probationary driving privileges:

(1) under:

(A) section 12(a) of this chapter, if the person has a previous conviction that occurred at least ten (10) years before the conviction under consideration by the court; or

(B) section 12(c) of this chapter; or

(2) to a person who has a prior unrelated conviction for an offense under this chapter of which the consumption of alcohol is an element;

must prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. However, a court is not required to order the installation of an ignition interlock device for a person described in subdivision (1) or (2) if the person is successfully participating in a court supervised alcohol treatment program in which the person is taking disulfiram or a similar substance that the court determines is effective in treating alcohol abuse.

(c) A court may not order the installation of an ignition interlock device on a vehicle operated by an employee to whom any of the following apply:

(1) Has been convicted of violating section 1 or 2 of this chapter.

(2) Is employed as the operator of a vehicle owned, leased, or provided by the employee's employer.

(3) Is subject to a labor agreement that prohibits an employee who is convicted of an alcohol related offense from operating the employer's vehicle.

As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.8; P.L.172-2006, SEC.2.

IC 9-30-5-17

Restitution to emergency medical services restitution fund

Sec. 17. (a) In addition to:

(1) a sentence imposed under this chapter for a felony or misdemeanor; and

(2) an order for restitution to a victim;

the court shall, without placing the individual on probation, or as a

condition of probation, order the individual to make restitution to the emergency medical services restitution fund under IC 16-31-8 for emergency medical services necessitated because of the offense committed by the individual.

(b) An order for restitution under this section may not be for more than one thousand dollars (\$1,000).

(c) In making an order for restitution under this section, the court shall consider the following:

(1) The schedule of costs submitted to the court under IC 16-31-8-5.

(2) The amount of restitution that the individual is or will be able to pay.

(d) The court shall immediately forward a copy of an order for restitution made under this section to the Indiana emergency medical services commission under IC 16-31-8.

As added by P.L.2-1991, SEC.18. Amended by P.L.2-1993, SEC.68.

IC 9-30-5-18

Driving while intoxicated or alcohol and drug services program; certified abstract of program enrollment

Sec. 18. (a) If:

(1) a criminal proceeding for driving while intoxicated under IC 9-30-5 is deferred under IC 12-23-5-1 through IC 12-23-5-9;

or

(2) a child alleged to be a delinquent child based upon the child's violation of IC 9-30-5 voluntarily attends or is ordered by the court under IC 31-37 to attend an alcohol and drug services program;

the court, within ten (10) days after the defendant or child begins the program, shall forward to the bureau a certified abstract of program enrollment.

(b) The abstract must state the following:

(1) The defendant's or child's name, address, date of birth, and driver's license number.

(2) The name and location of the alcohol and drug services program that the defendant or child is attending.

As added by P.L.125-2012, SEC.342.